

## MEMORANDUM OF LAW

DATE: July 17, 1992

TO: Severo Esquivel, Deputy City Manager

FROM: City Attorney

SUBJECT: Housing Commission

By memorandum dated June 22, 1992, copy attached as Attachment 1, you indicated that the City Manager's office is reviewing the question of whether or not to permanently place the Housing Commission administration under the City Manager. You also asked the following questions:

What Council actions are legally necessary to permanently designate the City Manager or his designee as the Executive Director of the Housing Commission?

What legal actions, if any, are required to bring the Housing Commission staff operations back into the City? What are the legal alternatives?

Under state law what are the options for the role and function of the Housing Commission and Housing Authority? What are the alternative roles for the Housing Commission if the function of the Executive Director is placed under the City Manager?

In order to understand the legal alternatives it seems appropriate to first provide a brief history of the Housing Commission.

### BACKGROUND

The Housing Authority is a state agency created by the City pursuant to Section 34200 et seq. of the State Health and Safety Code which provisions constitute the Housing Authorities Law. Under the Housing Authorities Law, a city council can declare the existence of a housing authority and appoint the mayor and council to serve as the board of directors of the housing authority or, in the alternative, the mayor and council can appoint not more than seven private persons to serve as the board of directors of the housing authority.

In 1969, the City Council elected to create the Housing Authority of The City of San Diego and appointed itself to serve

as the board of directors. Shortly thereafter, the City Council appointed an advisory board of seven private persons to advise the Authority on housing issues. The advisory board was called the Housing Advisory Board.

The Housing Authority, which was staffed by City employees in a City department then known as Community Development, sought and obtained an annual contributions contract from HUD to operate what was called the Section 23 Program whereby the Housing Authority rented privately-owned apartment complexes and subleased the apartments directly to low income persons and families. The Housing Authority entered into a management contract with a private management firm to operate the Section 23 Program. Prior to 1976 there were only a few City employees providing staff work with regard to the Section 23 Program.

Concurrently, federal funds were also applied for and obtained by the City for a housing rehabilitation program known as CHIRP. That program was not administered by the Housing Authority but was operated and administered by personnel in the City's Building Inspection Department.

In 1976, HUD began funding a rental subsidy program known as Section 8. That program differs from the old Section 23 Program in that low income persons and families are given a "Section 8 Certificate" which allows them to pick their own rental unit anywhere in the City. The unit is then inspected by Housing Authority staff to determine whether it is "decent, safe and sanitary" and if so, the Housing Authority enters into an agreement with the property owner to provide a supplemental rental payment in addition to any rental amount paid by the tenant based upon the tenant's income. The Section 8 Program was not placed under the private management company.

By 1979 there were approximately 40 City employees providing staff services to the Housing Authority under an agreement between the Housing Authority and the City.

By 1979, there were also approximately 20 City employees working for the Building Inspection Department providing services in connection with housing rehabilitation.

In late 1978 and early 1979, there was substantial City Council discussion about how to improve the efficiency and reaction time of the Housing Authority.

The problems which were perceived at the time were that any action by the Housing Authority was generally taken only after the proposed action had been reviewed by the Housing Advisory Board, after the Housing Advisory Board's recommendation had been reviewed by the City's Public Services and Safety Committee and after the City Manager had made his recommendation on the

proposed action. The process often took several weeks and problems had arisen in meeting HUD's deadlines, which often required a decision in less than the normal processing time for Housing Authority actions.

The City Council had recently assisted in the formation of the Centre City Development Corporation to help expedite the Horton Plaza redevelopment project. That project had been staffed through a City department and there were various concerns that the processing time for any redevelopment action was too complex and time consuming. The CCDC process appeared to work well.

About the same time, the state law also changed to require that two low-income tenants be placed on every housing authority or, in the alternative, required the creation of a not more than seven-member housing commission on which two low-income tenants would serve as directors. The City Council decided to create a Housing Commission and to place the two low-income tenants on the Commission. The City Council also adopted an ordinance which is now codified as section 98.0301 which, in effect, delegated the vast majority of the functions of the Housing Authority to the Housing Commission, similar to the process whereby the Horton Plaza redevelopment activities had been delegated to CCDC. The primary control that the Housing Authority retained, like the Redevelopment Agency retained over CCDC, was a requirement that the City Council, sitting as the Housing Authority, approve an annual budget for all the operations of the Housing Commission, and that the Housing Commission operate in accordance with such approved budget.

The City employees who had been working on the Housing Authority projects from both the Community Development Department and the Building Inspection Department were, in 1979, "loaned" to the Housing Commission to provide its staff for a period of one year after which the employees were given the choice of either separating from the City's Civil Service and becoming a permanent Housing Commission employee, or returning to the City to work in some non-Housing Authority function. Most of the employees chose to stay with the Housing Commission permanently and a few of the employees chose to return to the City.

The Housing Commission was initially made up of seven private citizens, including the two low-income tenants. The first executive director of the Housing Commission was chosen after a nationwide search by a private firm. From 1979 until 1988, the seven citizen commissioners worked with the executive director and the Housing Commission staff in expanding the operations of the Housing Commission which included increasing

the number of Section 8 Certificates allocated to the City, expanding the housing rehabilitation program, creating a public housing program which involved obtaining funds from HUD for the acquisition of existing projects and the construction of new projects.

In 1988, the first executive director's annual employment contract was not extended and the Housing Authority, after another nationwide search, chose a new executive director.

Because of factors relating to dissatisfaction with the first executive director, the City Council amended the Housing Commission ordinance to allow the appointment of City Councilmembers to the board of the Housing Commission and thereafter has operated with as many as five and as few as three City Councilmembers sitting on the seven member board.

In 1992, for a variety of reasons, the Housing Authority determined not to extend the present executive director's employment contract. Various members of the Housing Commission and Housing Authority have expressed concerns with regard to the manner in which the Housing Commission has been operated.

#### DISCUSSION

The first question you ask is:

What Council actions are legally necessary to permanently designate the City Manager or his designee as the Executive Director of the Housing Commission?

City Charter Section 28 defines the duties of the City Manager. Section 28 also specifically allows the City Manager "to perform such other duties as may be . . . required of him by ordinance or resolution of the Council." This provision in the Charter section was utilized by the City Council when it took action earlier this year to temporarily delegate the function of managing the commission to the City Manager. A copy of the Council's resolution is attached as Attachment 2. The Council could, therefore, "permanently" designate the City Manager as the executive director of the Commission and the Authority by adopting a resolution or ordinance.

The existing ordinance relating to the creation and function of the Housing Commission is codified as Section 98.0301 of the City's Municipal Code. Both the City Manager and the executive director are given certain rights and obligations under Section 98.0301. It is recommended that, if the City Council determines to permanently delegate the duties of the executive director of the Housing Commission to the City Manager, an ordinance be adopted specifically providing for such delegation

and at the same time make any other changes in the existing ordinance so that it is consistent with the City Manager acting as the executive director.

Your second question is:

What legal actions, if any, are required to bring the Housing Commission staff operations back into the City? What are the legal alternatives?

As noted in the above background discussion, the Housing Commission staff were originally employees of the City under an agreement with the Housing Authority whereby the Housing Authority paid for the costs of such employees. It was decided in 1978 that the Commission should have its own staff and be officially separated from the City. Therefore, as noted above, the City employees which provided the initial Housing Commission staff were given one year to either decide to separate from the City or to stay with the City and be reassigned to non-Housing Commission matters.

For the past approximately 13 years, the Commission has operated with its own staff and at present has approximately 240 employees. The Housing Commission has its own package of employee benefits and its own retirement system. However, it appears to be legally feasible to reverse the process utilized in 1979 by, for example, providing a one-year period for the transition of Housing Commission employees into the City. A new agreement would have to be drafted and approved by the City, the Housing Authority and the Housing Commission providing for the City employees to furnish services to the Housing Commission and further specifying the method by which the City would be reimbursed by the Housing Commission for all costs incurred by the City providing the employees.

The specifics of bringing as many as 240 Housing Commission employees into the City's Civil Service system can best be addressed by the Personnel Department in consultation with the City Auditor, Retirement and Financial Management officers. It could be that a separate category of retirement system members would be appropriate for the Housing Commission employees transitioning into the City. Issues such as selective certification and reciprocity of systems and other matters relating to the City's Civil Service Rules would have to be addressed. If, after considering the answers and discussion contained in this memorandum, you wish to pursue bringing the Commission staff into the City system, we should meet with the above City officers and discuss in depth the potential problems and any available alternatives.

Your third question is:

Under state law what are the options for the role and function of the Housing Commission and Housing Authority? What are the alternative roles for the Housing Commission if the function of the Executive Director is placed under the City Manager?

As noted in the above background information, there is no legal requirement that there be a Housing Commission. As a legal matter the Housing Authority could function without a Housing Commission with the one requirement being that, if the City Council continued to serve as the members of the Authority, two additional low-income tenants would have to be added as members of the Housing Authority.

Another alternative would be for the City Council to discontinue as the members of the Housing Authority and appoint a seven-member Housing Authority made up of seven private citizens including two low-income tenants. Another legal alternative would be to maintain the present Housing Authority/Housing Commission arrangement but to modify Municipal Code Section 98.0301 to place greater restrictions on the activities of the Housing Commission and return some of the administrative functions to the Housing Authority. Whether the City Manager is designated to act as executive director has no legal bearing on the various options.

It is our understanding that there are dozens of housing authorities and housing commissions operating in California. It is also our understanding that many city councils have appointed themselves to serve as the commissioners of various housing authorities and many other cities have appointed private citizens to serve as commissioners. Before proceeding with any changes in the present operation in this city, it is suggested that you could probably benefit by contacting other major California cities to discuss their housing authority operations and any problems other cities may have encountered in operating within the restricted time frames often imposed by HUD. It would also seem appropriate to contact HUD officials to determine whether they have found any particular housing authority/housing commission format to be particularly responsive and efficient.

JOHN W. WITT, City Attorney

By

Harold O. Valderhaug

Deputy City Attorney

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Attachments 2

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